



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,373	11/09/2001	Marguerite B. McDonald	55915 79422	1045

7590

09/24/2004

Martin Korn, BAKER, DONELSON, BEARMAN & CALDWELL  
BERKOWITZ DANIELLE L. TROSTORFF  
201 ST. CHARLES AVE., STE. 3600  
NEW ORLEANS, LA 70170

EXAMINER

THALER, MICHAEL H

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/014,373	<b>Applicant(s)</b> MCDONALD, MARGUERITE B. <i>CM</i>	
	<b>Examiner</b> Michael Thaler	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 1-27 and 36-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/9/01 11/24/03</u> . | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 3731

Applicant's election with traverse of Invention II and the species of the trapezoidal cross-sectional shape in the reply filed on June 21, 2004 is acknowledged. The traversal is on the ground(s) that it would not be unduly burdensome to include all disclosed shapes in a single application. This is not found persuasive because it would be unduly burdensome to include all disclosed shapes in a single application.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-27 and 36-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on June 21, 2004.

The disclosure is objected to because of the following informalities: In claim 30, line 2 "arpetures" should be "apertures". In claim 31, line 2 "arperture" should be "aperture". Appropriate correction is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3731

Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The syringe referred to in claim 32 appears to be the same element as the fluid source defined in claim 29, resulting in a double recitation of the same element. The fluid source defined in claim 29 is part of the claimed combination. However, the syringe referred to in claim 32 is not part of the claimed combination in view of the phrase "adapted to be connected" in line 2. Thus, it is unclear if the syringe is part of the claimed combination or not.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yaacobi et al. (6,413,245) in view of Doshi et al. (6,443,944). Yaacobi et al. disclose handle 56, spatula-like member 52, 54 including an arcuate distal section 52. Yaacobi et al. disclose the spatula-like member as having a

Art Unit: 3731

circular rather than a trapezoidal cross-sectional shape as claimed. However, Doshi et al. teach that the tubular member of a surgical instrument may have a trapezoidal rather than a circular cross-sectional shape (col. 6, lines 47-52) apparently since each shape would work equally well. It would have been obvious to make the cross-sectional shape of the Yaacobi et al. instrument trapezoidal rather than a circular for this reason.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note col. 13, lines 57-63 of Constantz et al. (6,562,020) and col. 3, lines 6-8 of Corlew (6,030,393).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (703)308-2154. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

Application/Control Number: 10/014,373

Page 5

Art Unit: 3731

mht

9/20/04



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731